

**ORDINANCE 1438-2014**

**AN ORDINANCE AMENDING ARTICLE II (NON-UNIFORMED PENSION PLAN, F/K/A RETIREMENT INCOME PLAN) OF CHAPTER 38 OF THE CITY OF COATESVILLE'S CODE ENTITLED "PENSIONS" TO ADOPT CERTAIN AMENDMENTS THERETO RELATING TO THE PARTICIPATION OF CITY OF COATESVILLE EMPLOYEES WHO ARE MEMBERS OF THE BARGAINING UNIT REPRESENTED BY CITY OF COATESVILLE LOCAL 1821 OF THE AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, DISTRICT COUNCIL 88 (THE "UNION") HIRED ON, OR AFTER, JANUARY 1, 2001**

WHEREAS, the City of Coatesville originally constituted as a Third Class City located in Chester County, Pennsylvania and now governed by a Home Rule Charter (hereinafter the "City");

WHEREAS, the City is required to amend its Retirement Income Plan pursuant to the collective bargaining agreement by and between the City and the Union covering the period January 1, 2001 - December 31, 2003, as well as subsequent collective bargaining agreements, to include a Pennsylvania Third Class City Code – compliant pension program for members of the bargaining unit represented by the Union hired on, or after, January 1, 2001;

WHEREAS, the City wishes to implement such a Third Class City Code- compliant pension program; and

WHEREAS, the City wishes to change the name of the Retirement Income Plan to the "Non-Uniformed Pension Plan," effective as of the date of the enactment of this Ordinance.

NOW, THEREFORE, in consideration of the foregoing, and the authority granted to the City under the Third Class City Code, the City Home Rule Charter and other relevant law, the City, by this Ordinance No. \_\_\_\_\_ (the "Ordinance"), does hereby amend Chapter 38 of the City Code by amending Article II thereof to rename the Retirement Income Plan to the Non-Uniformed Pension Plan.

In addition, the City by the Ordinance does hereby amend Chapter 38 of the City Code by amending Section 38-17 to read as follows:

**§38-17. Administration**

The Pension Plan Administrator, designated by the Council of the City, shall administer the plan.

In addition, the City by the Ordinance does hereby amend Chapter 38 of the City Code by adopting a new Section 38-18A at the end thereof to read as follows:

**§38-18A. Local 1821: Members hired as employees by the City of Coatesville on or after January 1, 2001.**

A. Applicability. As of the effective date of this Ordinance, the provisions of this Section 38-18A shall apply to any member of the bargaining unit represented by the Union hired as a full-time employee by the City on, or after, January 1, 2001, who is regularly scheduled to work and actually works 1,000 or more hours per year, and shall supersede any otherwise contradictory, or contrary provision of this Article II (each, a "Covered Employee").

Notwithstanding the foregoing, the provisions of this Article II shall remain in full force and effect, unless otherwise contrary to the provisions of the Section 38-18A, in which case, the provisions of this Section 38-18A shall control. Any period of "service" referred in this Ordinance with respect to employment by the City shall be computed from the first date of employment with the City and need not be continuous; periods of layoff, suspension or leave of absence do not interrupt service. A "year of service" for purposes of this Ordinance means a full year during which a Covered Employee was an employee of the City and/or made required contributions to the Non-Uniformed Pension Plan for military service time prior to participating in the Non-Uniformed Pension Plan or for uniformed service after initial participation in the Non-Uniformed Pension Plan.

B. Retirement Benefits; Amount of Pension. Every Covered Employee who shall have attained the age of sixty (60) years and upwards and who shall have served as an employee for a period of twenty (20) years or more, shall upon the date of his or her retirement and upon application to the Pension Plan Administrator, during the remainder of his or her life, receive the pension fixed by the provisions of the Non-Uniformed Pension Plan, as applicable, Act 317, approved June 23, 1931 (P.L. 932), as amended, and this Section 38-18A.

(1) Full Pension. During the lifetime of any Covered Employee, he or she shall be entitled to receive a pension annually from the fund set aside for such purpose under the Non-Uniformed Pension Plan (the "Fund"), fifty (50%) percent of the amount which would constitute the highest average annual salary or wages which he or she earned during any five (5) years of service for the City or which would be determined by the rate of the monthly pay of such person at his or her date of retirement, whichever is higher, reduced by an amount equal to forty (40) percentum of the primary insurance amount of Social Security paid or payable to the Covered Employee (the "Full Pension"). Such pension shall be paid in monthly payments.

(2) Entitlement to Full Pension. A Covered Employee is entitled to his or her Full Pension when:

(i) Such Covered Employee has served the City for twenty (20) years of service and is terminated on or after the date on which such Covered Employee has attained the age of sixty (60) years. In such case, the Covered Employee is entitled to his or her Full Pension during the remainder of his or her life after the later of: (a) his or her termination; and (b) his or her attainment of age sixty (60);

(ii) Such Covered Employee has served the City for twenty (20) years of service and is terminated before the date on which such Covered Employee has attained the age of sixty (60) years, provided that he or she continues his or her contributions into the Fund at the

same rate as when he or she left employment until he or she attains the age of sixty (60) years.

In such case, the Covered Employee is entitled to his or her Full Pension during the remainder of his or her life after his or her attainment of age sixty (60); or

(iii) Such Covered Employee is permanently disabled in accordance with the provisions of Subsection E.

(3) Entitlement to Reduced Pension. A Covered Employee is entitled to a reduced pension when such Covered Employee has served the City for at least twelve (12) years and is terminated before reaching age sixty (60) with twenty (20) years of service. Such Covered Employee shall be entitled to receive such portion of the Full Pension as the period of his or her service up to the date of his or her termination with the City bears to the total period of service (including the period of service up to the date of his or her termination with the City) necessary to reach age sixty (60) with twenty (20) years of service (the "Reduced Pension"). In such case, the Covered Employee is entitled to the portion of his or her Full Pension calculated pursuant to the preceding sentence during the remainder of his or her life after the later of: (a) his or her termination; and (b) his or her attainment of age sixty (60).

(4) Refund of Contributions. A Covered Employee who has contributed to the Fund shall be entitled to a refund of the total amount of contributions, including any military service buy-back payment(s) paid into the Fund by him or her and any payments for intervening military service, without interest, if such Covered Employee is not entitled to a Full Pension pursuant to subparagraph (2) of this Subsection B or a Reduced Pension pursuant to subparagraph (3) of this Subsection B and such Covered Employee has served less than twelve (12) years and ceases to be in the employ of the City.

If any such Covered Employee has had returned to him or her the amount contributed, as aforesaid, and shall afterwards re-enter the service of the City, he or she shall not be entitled to

any pension under the terms of the Non-Uniformed Pension Plan, unless he or she shall returns to the Fund the amount withdrawn including any prior military service time buy-back payments(s), in which event the required period of service under this Section 38-18A shall be computed from the date he or she first entered the service of the City. Otherwise, the date of his or her period of service shall commence upon re-entry to City service. In the event of the death of any Covered Employee after he or she becomes entitled to a pension under this Section 38-18A and has not elected to retire, the total amount of contributions including any military service buy-back payment(s) paid into the Fund by him or her shall be paid over to his or her estate, without interest. In the event of the death of a Covered Employee before he or she becomes entitled to a pension under this Section 38-18A, the total amount of contributions including any military service buy-back payment(s) paid into the Fund by him or her shall be paid over to his or her estate, without interest. In the event of the death of a Covered Employee before he or she receives in pension an amount equal to the Covered Employee's own contributions to the Fund, then the balance of the Covered Employee's own contributions including any military service buy-back payment(s) shall be paid over to his or her estate, without interest.

(5) Forfeitures. To the extent applicable, upon the forfeiture of any non-vested portion of a Covered Employee's accrued pension, or of any other amount payable hereunder, the amount of such forfeiture shall be credited against the future contribution obligations of the City with respect to the Non-Uniformed Pension Plan.

C. Pension Options.

(1) A Covered Employee's monthly pension may be payable under one of the options listed in subparagraphs (1)(a) through (c) of this Subsection C. The amount of pension will be actuarially adjusted for each option:

(a) Lifetime pension: a monthly pension payable as long as the Covered Employee lives, with payments ceasing upon the Covered Employee's death.

(b) Joint and survivor pension: a monthly pension payable as long as the Covered Employee lives. If the Covered Employee's named survivor is still living upon the Covered Employee's death, payments shall continue during the survivor's lifetime. Pension payments to the survivor may be 100%, 75%, 66 2/3% or 50%, in accordance with the percentage election made at the time of the pension option election.

(c) Lifetime pension with certain period: a monthly pension payable as long as the Covered Employee lives. Upon the Covered Employee's death, payments shall continue to the Covered Employee's designated beneficiary for the remainder of the certain period if the Covered Employee dies before a specified number of monthly payments (120 or 180) have been made. If the Covered Employee lives beyond the certain period, payments shall continue as long as the Covered Employee lives.

(2) The Covered Employee's choice of a pension option shall be made before payments begin and cannot be changed thereafter.

(3) The normal form of retirement benefit for each Covered Employee shall be a lifetime pension in accordance with subparagraphs (1)(a) of this Subsection C.

(4) For purposes of this Section 38-18A, "actuarial equivalence" and "actuarial adjustment" mean any aggregate amounts, all equal in value, which are expected to be received under different forms of payment computed using the actuarial assumptions certified to the Public Employee Retirement Commission on its most recent Act 205 Actuarial Valuation Report.

D. Intervening Military Service.

(1) Upon re-employment of a Covered Employee following the completion of a

period of active duty military service in the uniformed services of the United States within the meaning of the Uniformed Services Employment and Reemployment Act of 1994 (Pub. L. 103-353) (“USERRA”), such Covered Employee shall have the right to: (a) repay any amount previously paid to him from the Non-Uniformed Pension Plan; and (b) make up any missed required contributions with respect to such Covered Employee. The rate of pay and required Covered Employee contributions shall be determined using such rates that would have been in effect had such Covered Employee not been absent due to active duty military service. For purposes of the immediately preceding sentence, “active duty military service” shall include any report-back period applicable under USERRA.

(2) The maximum repayment period and other rights regarding a pension not otherwise set forth in detail herein with respect to any Covered Employee shall be determined in accordance with USERRA and 51 Pa. C.S. §7306(a)-(c), to the extent applicable.

(3) To the extent a Covered Employee makes the repayments required under this Subsection D, he or she shall receive the same pension as if he or she had remained continuously employed by the City during any such period of active duty military service.

E. Retirement Due to Illness or Disability. Should a Covered Employee become so permanently disabled as to render he or she unable to perform the duties of his or her position after twenty (20) years of service with the City, he or she shall be entitled to a Full Pension calculated under this Section 38-18A during such period of disability. Should a Covered Employee become so permanently disabled as to render he or she unable to perform the duties of his or her position after ten (10) years of service with the City but before the expiration of twenty (20) years of service, such Covered Employee shall be entitled to a Reduced Pension, which shall equal such portion of the Full Pension as the period of his or her service up to the date of his or her permanent disability bears to the full twenty (20) year period of service. Such

Full Pension or Reduced Pension shall begin as of the date of permanent disability. Proof of such disability shall consist of the sworn statement of three (3) practicing physicians, designated by the Pension Plan Administrator that the employee is in a condition of health which would permanently disable him from performing the duties of his or her position.

F. Amount of Contributions. All the aforesaid Covered Employees shall pay into the Fund monthly an amount equal to five (5%) percent of his or her gross earnings in excess of, the Social Security taxable wage base then in effect and three and one-half (3 ½%) percent of earnings equal to or less than the Social Security taxable wage base then in effect.

G. Missed Contributions. While in City Service to the extent any Covered Employee who would otherwise have been obligated to make employee contributions pursuant to this Section 38-18A fails to do so, he or she may purchase “past service credit” to cover the period of time during which no such contributions were made with respect to this Section 38-18A. Such past service credit may be purchased by making a payment to the City of Coatesville in a check delivered to the City Finance Department in an amount equal to the aggregate amount of each missed contribution plus interest calculated from the date such person became a Covered Employee until the date on which he or she submits an application to the Pension Plan Administrator, on the form it provides, to purchase such past service credit. For purposes of the preceding sentence, “interest” shall be based upon the aggregate investment experience of the Non-Uniformed Pension Plan during the period of missed contributions.

H. Method of Payment. Any pensioner under this Section 38-18A shall have the right to choose whether he or she wants to receive payment by check, mailed to them, or direct deposit. If direct deposit is elected for by the pensioner, the pensioner is required to provide information about his or her bank account on a form provided by the Pension Plan Administrator. Any change to a direct deposit instruction must be provided to the Pension Plan Administrator at

least fifteen (15) business days in advance of the effective date of such change on a form provided by the Pension Plan Administrator

I. Conflicts with Statutory Provisions. In all matters that are regulated by the laws of the Commonwealth of Pennsylvania or by regulations of departments or agencies of the Commonwealth promulgated by authority of law, such laws or regulations shall control.

J. Continuation of existing regulations. The provisions of this Section 38-18A, as far as they are the same as those of ordinances and/or codes in force immediately prior to the enactment of this Ordinance, are intended as a continuation of such ordinances and codes and not as new enactments. The provisions of this Section 38-18A shall not affect any act done or liability incurred, nor shall they affect any suit or prosecution pending or to be instituted to enforce any right or penalty or to punish any offense under the authority of any of the repealed ordinances.

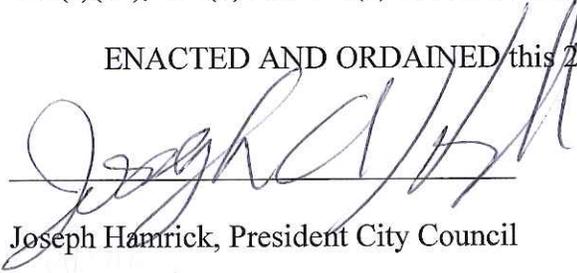
K. Any portions of Ordinance found to be unconstitutional, illegal or unenforceable is severed. If any portion of this Ordinance shall be determined to be unconstitutional, illegal or unenforceable, then the portion and only that portion of this Ordinance, which is deemed to be unconstitutional, illegal or unenforceable, shall be severed from the remainder of this Ordinance and all other terms thereof shall remain in full force and effect.

L. Effective date of Ordinance. This Ordinance shall be effective thirty (30) days after publication following final adoption in accordance with the City Home Rule Charter and the "Third-Class City Code."

M. Savings Clause. Notwithstanding anything to the contrary contained in this Ordinance, the provisions of this Ordinance shall be construed in accordance with 53 P.S. §§39340-39353 and those provisions of the Internal Revenue Code of 1986, as amended, and the Treasury regulations and other Internal Revenue Service and Treasury Department guidance

promulgated thereunder that relate to tax-qualified governmental pension plans including, but not limited to, the provisions of sections 401(a)(2), 401(a)(9), 401(a)(31), 401(a)(37), 402(c)(11), 414(u) and 415(b) of the Internal Revenue Code of 1986, as amended.

ENACTED AND ORDAINED this 27<sup>th</sup> day of October, 2014.

  
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Joseph Hamrick, President City Council

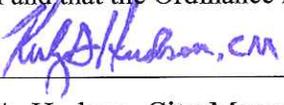
ATTEST:

  
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Kirby A. Hudson, City Manager

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CERTIFICATION

I HEREBY CERTIFY that the foregoing Ordinance was introduced on the 13<sup>th</sup> day of October, 2014 and was duly enacted by the Council of the City of Coatesville, Chester County, Pennsylvania, of the 27<sup>th</sup> day of October, 2014, that the vote upon the said Ordinance has been recorded in the Minutes of the City Council and that the Ordinance has been fully recorded.

  
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Kirby A. Hudson, City Manager

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